

Minutes
WARRICK COUNTY AREA BOARD OF ZONING APPEALS

Regular meeting to be held in the Commissioners Meeting Room,
Third Floor, Historic Courthouse,
Boonville, Indiana
July 23, 2018 at 6:00 P.M.

PLEDGE OF ALLEGIANCE

MEMBERS PRESENT: Jeff Valiant, Chairman; Terry Dayvolt, Doris Horn, Mike Moesner, Jeff Willis, and Mike Winge.

Also present were Morrie Doll, Attorney, Molly Barnhill, Assistant Director, and Kim Kaiser, staff.

MEMBERS ABSENT:

MINUTES: Upon a motion made by Mike Winge and seconded by Mike Moesner the Minutes of the last regular meeting held June 25, 2018 were approved as circulated.

Chairman, Jeff Valiant explained the rules of procedure.

BZA-SU-18-13

APPLICANT: Skyway Towers, LLC and GTE Wireless of the Midwest, Inc. d/b/a Verizon Wireless by David Pike, Attorney.

OWNER: Michael L. Kroeger

PREMISIS AFFECTED: Property located on the south side of Eble Rd approximately 880 feet east of the intersection formed by Eble Rd and SR 61, Anderson Twp. 33-6-8 (*Complete legal on file*)

NATURE OF CASE: Applicant requests a Special Use, SU18, from the requirements as set forth in the Comprehensive Zoning Ordinance in effect for Warrick County, IN to allow an Improvement Location Permit for a 205' self-supporting tower with a 10' lighting rod (215' total) and associated equipment and equipment shelter to be within a 100'X100' square foot lease area with a 30' access and utility easement in an "A" Agricultural Zoning District. (*Advertised in The Standard July 12, 2018*)

Robert Grant, Attorney and Michael Kroeger, owner were present.

Chairman Valiant called for a staff report.

Mrs. Barnhill stated we have all of the green cards except for one from the State of Indiana. She said the existing land use was zoned agricultural with a residence and multiple farm buildings. She said the surrounding zoning and land use in all directions was zoned agricultural and are either vacant or have residences. She stated there is no flood plain. She said they are proposing

to extend the existing driveway of the property owner to the tower. She stated they would have to file a commercial driveway permit to upgrade the existing driveway and post a letter of credit or construct the driveway prior to permits being issued. She said the driveway will be crossing a legal drain and the Drainage Board has required a hold harmless be given for that. She said the applicant states "a 215' wireless communications facility and there is a whole packet with the drawings and plot plans that everyone has. She said the proposed tower would be a monopole tower 205' with a 10' lightening rod. She stated there is not an existing tower or structure that cannot accommodate the area to be covered by the proposed tower. She said the tower would be able to co-locate an addition of three more service providers once the tower has been completed. She stated the setback requirement from any residence is a distance of two feet for each one foot of height for the tower or 300' whichever is greater. She said the total height of this tower is 215' so it should be at least 430' away from any residence. She said they are showing the proposed tower is 445' from the nearest residence, which is on the same property as the proposed site location. She said the nearest structure is an unattached structure and it is over 100' from the tower; the closest property line is 416' from the proposed tower. She stated everything is in order.

Robert Grant stated he would like to make one correction to the staff report. He said they are proposing a 215' tower that is correct but it is a self-support tower not a monopole. He said if you look at the drawings. He said he believes that is a typographical error in the staff report. He said they have provided the Board with some binders and we have a power point presentation but he could see that the computer was updating. He said the slides are in the packet that he has provided. He said what he would suggest this evening, since we have no concerned neighbors here and the power point presentation will cover material that this Board has seen before, unless the Board would like to go through those slides, he is going to just decline to do that and make his comments very brief and open the floor to questions. He said the Skyway Towers under the new state statute is a tower company that is contracted by Verizon Wireless to construct this tower. He said Skyway Towers would own it and Verizon Wireless would be their anchor tenant. He said there would be space on the tower for any other carriers that are interested in co-locating on it. He said there will not be any problem if any carriers come to them they will be welcomed. He stated having said that he is going to concede the floor and open it to questions.

The Chairman asked if there were any questions from the Board.

Jeff Willis said a monopole collapses in on itself where this is a self-supporting tower. He asked what the difference in them was.

Robert Grant stated they are designed the same way, they all are designed these days particularly the self-support and the monopoles. He said the guide towers are a little bit different but they are designed two-thirds of the way up with a fail-safe point and in worst-case scenario, it kinks all of the way over and the top half will lay down on itself for a zero fall zone within the compound. He stated actually the tower companies define failure as just a kink that is what they are really designed to do. He said it was like a tree giving in the wind, they were designed to kink a little bit, yield to the wind and they would consider that a failure if it wasn't pristine.

Jeff Willis asked if it would be lighted.
Robert Grant replied yes sir.

Mike Moesner said it shows one-half way up and one on the top.

Robert Grant stated since it is over 200' FFA would require lighting. He said it would be dual lighting, which is white in the daytime and red at nighttime. He said red was considered less intrusive to area residences.

Mike Winge asked if there would be room for an additional three antennas.

Robert Grant replied yes sir.

Terry Dayvolt stated on your detailed site plan sheet C-3 there are three spots that are marked future.

Robert Grant replied that is for the ground equipment for future co-locating carriers. He said there is space reserved on the tower for their antennas on the tower. He stated these facilities consist of three things the tower or pole structure, the antennas on the tower, and ground equipment with cables running up connecting to the tower. He said what this shows is the ground compound for what would be on the ground.

Terry Dayvolt said so that is where say AT&T would want to come on this site and they would build their radio equipment on one of those future sites. He asked if that was what they are for.

Robert Grant replied said that is exactly what that means, yes sir.

Terry Dayvolt asked are you going to put green around this space.

Robert Grant stated yes, there is a landscape plan included in the drawings. He said there would be five-foot evergreens and...

Terry Dayvolt said usually it is hardwood mulch.

Robert Grant replied yes sir. He stated this is an agricultural area. He said often they would ask for breathers in the landscaping in agricultural areas. He said it was designed with landscape plans so that would be the way it would be constructed.

Mike Winge said on the tower drawing you are showing a chain link fence surrounding with trees.

Robert Grant replied yes, there would be a six-foot chain link fence and three strands of barbed wire at the top to keep teenagers out of it. He stated it is a 100' x 100' leased area and the landscaping will be around the perimeter of the leased area.

Terry Dayvolt asked is a workshop the closest structure to this tower.

Robert Grant replied he thinks there is a shed or barn, owned by the property owner, which was within 100', the nearest residence meets the setback, and the nearest neighbor's residence is over 600' away.

Terry Dayvolt asked but the nearest structure is within 100'.

Robert Grant replied yes sir. He said it is a work building or utility building. He stated it was labeled as an exterior workshop here as you were saying. He said it looks like there are quite a few sheds and barns on the property.

Terry Dayvolt said it looks like the fuel tanks and the LP tank are within 100' too.

Several replies of no.

Michael Kroeger stated they are probably 50' from the house.

Chairman Valiant verified he said 50' from the house.

Michael Kroeger replied yes.

Terry Dayvolt said he was wondering because on the site plan it shows them next to that shed.

Michael Kroeger stated that was an old tank they haven't used for years. He said they used to use it for the torpedo heaters. He said it was diesel fuel but they haven't filled it for probably 20 years. He said he rather doubt (inaudible)

Ascertaining there were no remonstrators or further questions the Chairman called for a motion.

I, Mike Winge, make a motion finding of fact be made as follows from the testimony and proposed use statement:

1. The USE is deemed essential or desirable to the public convenience or welfare.
2. The USE is in harmony with the various elements or objectives of the Land Use Plan for Warrick County.
3. The USE will not be a nuisance or serious hazard to vehicles, pedestrians, or residents.
4. The USE as developed will not adversely affect the surrounding area.
5. Adequate and appropriate facilities will be provided for proper operation of the USE.

6. The specific site is appropriate for the USE.

In addition, the Application be approved in accordance to the application and plans on file, subject to the following conditions:

1. Subject to any required State or Federal Permits.
2. Subject to an Improvement Location Permit being obtained.
3. Subject to any required Building Permits being obtained.
4. Subject to the Special Use not being altered to become any other use nor expanded than that which was approved by the Board of Zoning Appeals.
5. Subject to the property being in compliance at all times with the applicable zoning ordinances of Warrick County.
6. Subject to all public utility easements and facilities in place.
7. Subject to an anti-climbing device and/or fence, be put up around tower.
8. Subject to a Hold Harmless agreement with the Drainage Board regarding the legal drain.
9. Subject to any required Commercial/Utility Drive Permit.
10. Subject to the following from the Warrick County Comprehensive Zoning Ordinance:

Each operator of a telecommunications facility must send to the Area Plan Commission a copy of any notice sent to the FCC of intention to cease operations. All abandoned or unused towers and associated facilities shall be removed within six (6) months of the cessation of operations at the site unless a time extension is approved by the Board of Zoning Appeals. A copy of the relevant portions of a signed lease which requires the applicant to remove the tower and associated facilities upon cessation of operations at the site shall be submitted prior to issuance of the required improvement location permit, shall be incorporated as part of the permit, and permit approval shall be conditioned upon removal of the structure(s) within six (6) months after cessation of the use. In the event that the tower is not removed within six (6) months of the cessation of operations at a site, the tower and associated facilities may be removed by the County and the costs of removal assessed against the property. (pg. 35)

Motion seconded by Doris Horn.

Attorney Doll stated he wanted to make it clear that the motion cannot be expanded by definition your motion means beyond a total of four antennae on this tower.

Mike Winge replied correct.

The motion carried.

Mrs. Barnhill told him we could have the approval ready by Wednesday.

Robert Grant replied terrific, thank you so much.

Mrs. Barnhill asked him if someone was going to come and get it or did he want the office to email the front sheet.

Robert Grant replied let us go with email for now and then if they change their mind they will send someone over.

Mrs. Barnhill replied okay we would get that to you.

ATTORNEY BUSINESS:

Attorney Doll stated that Wednesday morning at 9:00 a.m. would start the two day in the Prime Foods case on the sole issue of the Cobb's rights as an aggrieved party to have standing to request a judicial review. He said that matter would be decided by the court first before the merits of their objections would ever be considered. He said they start that at 9:00 a.m. on Wednesday.

Mike Moesner said you said it is a two-day deal. He asked would it take two days or is that what there is slotted for it.

Attorney Doll replied the Cobb's are unrepresented.

Mike Moesner said he wouldn't think so then.

Attorney Doll stated it is going to be a goat rope.

Terry Dayvolt stated they would be giving them plenty of time.

Attorney Doll replied yes, the judge will bend over backwards to give them the opportunity to prove their case. He said it starts on Wednesday morning at 9:00 a.m. He said this is a public hearing if anyone wanted to watch. He said he would rather you not linger so you don't end up on the witness stand but it is a public hearing.

There was an agreement that none of the members were going.

Chairman Valiant stated Morrie he is sure you will take care of it.

EXECUTIVE DIRECTOR:

None

Attorney Doll stated please tell them about Sherri.

Mrs. Barnhill stated she is out of her sling but she should have been out of it a lot earlier. She said Sherri had an appointment Thursday and the doctor was pretty upset that she hadn't started therapy.

Attorney Doll stated apparently the physical therapist made a mistake and kept her in it longer than they should have.

Mrs. Barnhill said yes, they were having her sleep in it and everything. She said she has scar tissue built up and they may have to go back into surgery to break that up if they can't get it done during aggressive therapy that starts tomorrow.

Mike Moesner said that didn't sound good.

Mike Winge said when they say aggressive it really gets aggressive.

Attorney Doll said thoughts and prayers, thoughts and prayers.

Terry Dayvolt told Chairman Willis he was glad to see him here tonight.

Chairman Valiant said he was glad to see Terry here also.

Terry said they were glad he could make the meeting.

Chairman Valiant stated he would be at the next one.

Mike Moesner asked that is a special meeting correct.

Chairman Valiant stated on August 25th.

Attorney Doll stated August 24th.

Chairman Valiant said why does he keep thinking the 25th.

Attorney Doll asked what time does it start on the 24th.

Mrs. Barnhill replied it starts at 1:00 p.m.

Ascertaining there was no other business the meeting adjourned at 6:22 p.m.

Jeff Valiant

ATTEST:

The undersigned Secretary of the Warrick County Board of Zoning Appeals does hereby certify the above and foregoing is a full and complete record of the Minutes of the said Board at their monthly meeting held July 23, 2018.

Molly Barnhill, Assistant Director